

by the trial judges the second appellant (and the third appellant) had ample opportunity to try and prevent or persuade the first appellant from using the gun on Tjong Sauw Yoong and Low Meng Hoe's wife. In our judgment the trial judges' finding that they took no steps at all to prevent the use of the gun by the first appellant was clearly open to them on the evidence and accordingly the second appellant was properly convicted on both charges.

The appeal of the third appellant — Wong Loke Fatt.

The third appellant was also convicted on two charges under section 5 of the Arms Offences Act, 1973. It is contended on his behalf that on the evidence the first appellant did not use his gun in committing the offence of robbery which was committed by the three appellants and that on the evidence the first appellant fired at Tjong Sauw Yoong and at Low Meng Hoe's wife after the commission of the robbery.

It was not in dispute at the trial that the appellants took from Low Meng Hoe his wallet containing cash in circumstances which amounted to the offence of theft as defined in section 378 of the Penal Code. The offence of robbery is defined in section 390 of the Penal Code as follows:—

"390.(2) Theft is 'robbery' if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property, obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint."

In our opinion the prosecution evidence established that the shots were fired at Tjong Sauw Yoong and Low Meng Hoe's wife in order that these two persons would desist from preventing the appellants from "carrying away property obtained by the theft". It follows, in our judgment, that the first appellant "used" his gun in committing the offence of robbery and the third appellant was therefore properly convicted on both charges.

Accordingly, the appeal of the first appellant in respect of his conviction on the first charge and the second charge is dismissed and his appeal in respect of his conviction on the third charge is allowed. The appeals of the second and third appellants are dismissed.

Order accordingly.

Solicitors: *David Marshall; J.S. Khosa & Co.*

MANILAL & SONS (PTE) LIMITED v. COLLECTOR OF LAND REVENUE

[Appeals Board (Choor Singh J. (Commissioner of Appeals))
May 3, 1977]

[Singapore — Appeal No. A.B. 55 of 1973]

Land Acquisition — Acquisition of warehouse property — Valuation by Collector — Appeal against sum awarded — Land Acquisition Act (Cap. 272), s. 27(3).

This is an appeal against the award of \$214,700 by the Collector of Land Revenue for the acquisition by the government of 22 Trafalgar Street, Singapore, on which stands an old warehouse. The property is within the "warehouse" zone in the 1966 Master Plan. The Collector's award reflects a value of \$37 per sq. ft. The appellants contend that the property was worth \$406,140 or \$70 per sq. ft. The date of acquisition was March 23, 1973. The Collector held his inquiry on June 8, 1973. The award was based on the valuation report and recommendations made on October 19, 1973. No regard, however, was taken of the sale of 410 Havelock Road at \$73.76 per sq. ft. on May 11, 1973.

Held: (1) appeals to the Appeals Board under the Land Acquisition Act are by way of rehearing and the Board has full power to receive evidence including evidence by oral examination before the Board. The parties to the appeal are entitled to put before the Board any fresh evidence that may have come to light after the date of acquisition and which will assist the Board in determining the compensation to be paid to the landowner;

(2) it is therefore erroneous to suggest that the Board cannot consider any sale which took place after the date of acquisition;

(3) the market value of the subject property at the date of acquisition was \$60 per sq. ft. and the award should be increased from \$214,700 to \$348,120.

APPEALS BOARD (Land Acquisition).

Sachi Saurajen for the appellants.

P. Selvadurai for the respondent.

Choor Singh J. (Commissioner of Appeals): This is an appeal against the award of \$214,700 by the Collector of Land Revenue for the acquisition by Government of Lot 1685 of T.S. 23 containing an area of 5,802 sq. ft. on which stands an old warehouse.

The property is known as 22 Trafalgar Street, Singapore, and is approximately 150 meters from the junction of Keppel Road, Anson Road and Trafalgar Street. It is a single storey brick wall tile roofed warehouse with a height of 17 feet to the eaves of the roof. It is solidly built and is an intermediate unit in a row of some ten other similar warehouses. There is a back lane at the back of these warehouses and beyond the back lane is a large monsoon drain. At some time in the past, the subject property had a back door opening on to this back lane but it has been bricked up and there is now no access to or from the back lane. Furthermore the back lane is now occupied by a number of squatters and unless and until they are cleared, it cannot be used for vehicular traffic. The subject property is owner occupied.

The relevant date for the purpose of ascertaining the amount of compensation to be paid to the owners of the property is March 22, 1973 for that is the date of the *Government Gazette* in which was published the requisite notification for the acquisition of this property. The property is within the "warehouse" zone in the 1966 Master Plan. The existing use of the land at the material date was also for warehousing purposes.

The Collector's award of \$214,700 reflects a value of \$37 per sq. ft. The appellants are dissatisfied with this award. They contend that the property was worth \$406,140 at the relevant date i.e. \$70 per sq. ft. It will be seen that there is a substantial difference between the parties as to the true value of the property at the relevant date.

Both parties have called expert witnesses before me, experts in the valuation of landed properties. Mr. Cheong Thiam Siew gave evidence for the appellants, the owners of the property; Mr. Yap Eng Bok for the respondent, the Collector of Land Revenue. They have both produced very comprehensive reports which include schedules containing maps, photographs and other data pertaining to the subject property as well as to other comparable properties on which they rely. I am grateful for this assistance.

The Collector who made the award in this case has also given evidence. He states that in deciding the amount of the compensation which he awarded he relied entirely on the valuation report of Mr. Yap.

It is not in dispute that at the relevant date, March 22, 1973, the property market was very active. The property market in Singapore began to improve in 1970. Prices rose gradually and towards the end of 1972 the rise in prices accelerated and reached the peak in September 1973. After that there was a levelling off of prices. In 1974 the prices of non-residential properties remained stable but there was a gradual decline in the prices of residential properties.

It is also not in dispute that the Master Plan zoning of a property in Singapore is, in the words of Mr. Yap "decisive" in assessing the value of a property. It is also agreed by the parties that "residential" zoning is inferior to "warehouse" zoning in terms of property values and that there is a shortage of good warehouses in Singapore.

Mr. Cheong for the appellants has cited a number of comparables but the first sale on which he relies is the sale on January 25, 1973 of Nos. 11 Raub Street and 24 and 25 Bernam Street for \$1,209,750 reflecting a value of \$75 per sq. ft. This sale took place two months before the relevant date. This property has an area of 16,130 sq. ft. and on it there are two pre war single storey godowns which are used as warehouses. The Master Plan zoning of this property is "commercial". The respondent says that because of the "commercial" zoning of this property it is far more valuable than the subject property and it is therefore not a good comparable for purposes of assessing the value of the subject property.

Next, Mr. Cheong relies on 37 Sibu Road, Singapore. This property has an area of 6,572 sq. ft. and on it there is a modern warehouse. It is used as a warehouse but the land on which this warehouse is built is zoned "residential". The owner of this property died on March 15, 1974 and the Commissioner of Estate Duties valued this property for purposes of estate duty at \$55 per sq. ft. Mr. Cheong says that the owner died in March 1974 when property prices had either levelled off or declined and had the owner died in March 1973 when property prices were

A still rising, this property would have been valued for estate duty at a higher figure. He also claims that "residential" zoning is inferior to "warehousing" and had this property been zoned "warehousing" it would have been valued by the Commissioner at a much higher figure. Mr. Cheong says that the Commissioner's valuation of a "residential" zoned warehouse at \$55 per sq. ft. shows that the subject property could not be worth less than \$55 per sq. ft. at the relevant date. Counsel for the respondent submits that the Commissioner of Estate Duties' valuation should not be relied upon because he has a tendency to value properties on the high side in order to collect as much estate duty as is possible. I reject this submission. The suggestion is very disturbing and incredible.

C The next comparable on which Mr. Cheong relies is the sale of No. 10 Jiak Kim Street on January 29, 1974 at \$85.35 per sq. ft. This sale took place nine months after the relevant date. This property is zoned "warehouse" in the Master Plan. It is a single storey pre-war building. It has an area of 28,117 sq. ft. which is approximately five times the area of the subject property. It has no river frontage. The respondent contends that there was an element of speculation in this sale. There is no evidence of it. The sale took place when prices of non-residential properties had levelled off and were stable.

E The last sale on which Mr. Cheong relies is that of 410 Havelock Road. It is a single storey godown on land zoned "warehouse". It has an area of 16,000 sq. ft. which is approximately three times the area of the subject property. It has river frontage. It was sold on May 11, 1973 at \$73.76 per sq. ft. This sale took place within two months of the relevant date. It is contended for the respondent that this property was purchased by Hong Leong Ltd. who were the owners of the property next door, No. 112 Havelock Road and they were therefore prepared to pay a high price. In my judgment the price paid was not exceptional having regard to sales of other warehouses. It was certainly not a fancy price. The price was lower than that paid by a different purchaser for 10 Jiak Kim Street which was sold for \$85.35 per sq. ft. about eight months later. This seems to suggest that Hong Leong Ltd. the purchasers of 110 Havelock Road paid the current market value of that property at that time bearing in mind the scarcity of such large warehouses in Singapore.

H Mr. Yap has produced a schedule of warehouse sales showing sales of seven warehouses but he relies entirely on one sale — i.e. the sale of Nos. 46 to 62 Palmer Road which took place on January 5, 1973 for \$1,800,000 i.e. two months before the relevant date. The other six sales listed in his schedule took place several years before the relevant date and are therefore of no help. This Palmer Road property on which Mr. Yap relies, is 50,016 sq. ft. in area and there is a row of godowns on it with brick walls and corrugated zinc roofs. The sale reflects a value of \$34.60 per sq. ft. with vacant possession for all except No. 58 which was tenanted. The appellants say that this is a large property having an area of 52,000 sq. ft. which is about ten times the area of the subject property, and that in sales of large properties the

price tends to be less than that of smaller properties. Further, it is contended on behalf of the appellants that one of the warehouses on this property, namely No. 58, was tenanted. If it had been sold with vacant possession, this property would have fetched a higher price. Furthermore, which is even more important, the sale in question was a transaction between Haw Par Brothers (International) Ltd. and Island Warehousing and Transportation (Pte) Ltd., and it is alleged that they are related companies; that the purchaser was a subsidiary of the vendor; that therefore it was not an arms-length sale and that the property was sold at book value and not at the market price.

Mr. Yap's schedule includes the sale of No. 10 Jiak Kim Street which took place on January 29, 1974 reflecting a value of \$85.13 per sq. ft. but he does not rely on this sale. When questioned as to why he had disregarded this sale, all he could say was "this is one sale that intrigues me". Mr. Yap has also disregarded the sale of 410 Havelock Road on May 11, 1973 at \$73.60 per sq. ft. and when pressed for his reasons for disregarding this sale, he stated that he disregarded these two sales because they took place after the relevant date.

Counsel for the respondent submits that all sales which took place after the relevant date should not be taken into consideration by the Board in this Appeal; that the Board must place itself in the place of the Collector as at the material date and therefore the Board must disregard the comparables cited by Mr. Cheong because the sales of those properties on which he relies and the valuation of 27 Sibu Road by the Commissioner of Estate Duties, all took place after the relevant date i.e. March 22, 1973. I am unable to accept this submission. There is no authority for it. Appeals to the Appeals Board under the Land Acquisition Act are by way of rehearing. The Board has full power to receive further evidence including evidence by oral examination before the Board. Indeed witnesses have invariably been called before the Board in every appeal that has been heard after the coming into force of the Land Acquisition Act. The parties to the appeal are entitled to put before the Board any fresh evidence that may have come to light after the relevant date and which will assist the Board in determining the compensation to be paid to the land owner for the acquisition of his land by the Government. In my judgment all sales of comparable property taking place within a reasonable time of the relevant date, both before and after, can be considered after making the necessary adjustments for all the relevant factors. For example, in this appeal, the respondent's expert witness, Mr. Yap relies on the sale of the Palmer Road property which took place on January 5, 1973 i.e. about two and a half months before the relevant date. I see no reason why this Board, in determining the proper compensation to be paid for the acquisition of the subject property, cannot take into consideration the sale of 410 Havelock Road which took place on May 11, 1973 i.e. 48 days after the relevant date, provided of course, the Board takes cognizance of all the distinguishing factors and makes the necessary adjustments. In my judgment it is entirely erroneous to suggest

A that the Board cannot consider any sale which took place after the relevant date.

B In this case, the date of acquisition is March 23, 1973. The Collector held his inquiry on June 8, 1973. The award was based on the valuation report and recommendations of Mr. Yap made on October 19, 1973. Both at the date of the inquiry and at the date of the award, the Collector and his adviser Mr. Yap were aware or should have been aware of the sale on May 11, 1973 of 410 Havelock Road at \$73.76 per sq. ft. In my judgment they were wrong in disregarding this sale when assessing the amount of compensation to be paid to the owners of the subject property. They were also wrong in relying entirely on the sale of the Palmer Road property which was not a sale in the open market but a sale from a holding company to a subsidiary and probably at book value.

C Counsel for the respondent submits that the properties 410 Havelock Road and 10 Jiak Kim Street are in the heartland of the warehouse area in Singapore where most of the banks have their warehouses; that these warehouses have access to the Singapore river and owners of these warehouses can transport their goods by lighters to and from ships anchored in the outer roads of the Singapore harbour and thus avoid paying fees to the P.S.A. for using the P.S.A. wharfs and that they are therefore much more valuable properties than the subject property. Frontage to the Singapore river is undoubtedly an asset but No. 10 Jiak Kim Street has at present no frontage to the Singapore river. The river at the back of this warehouse has been filled up. These two warehouses are quite some distance away from the central city area. On the other hand the subject property is close to the Singapore harbour, close to the railway station and close to the heart of the city where most of the merchant houses have their offices. In my judgment it is just as much desirable a warehouse as the ones in Havelock Road and Jiak Kim Street.

D Finally, much has been made of the fact that there are squatters in the back lane of the subject property but the important fact is that there are no squatters on the subject property. The squatters in the back lane do not in anyway restrict the use of the subject property as a warehouse. It is submitted that the squatters present a high fire risk and pilferage risk to the use of the subject property as a warehouse. These risks, in my opinion, are common to all warehouses and that is why warehouse owners always have fire insurance and employ full time watchman or security guards as they are now called.

E Giving the best consideration that I can to all the evidence put before me by both parties and to the submissions made by both counsel, I am of the opinion that the market value of the subject property at the relevant date was \$60 per sq. ft. and accordingly the appellants are entitled to \$348,120 as compensation for the acquisition of their property. The Collector having awarded \$214,700 only, the award is increased by the Board by \$133,420 under section 27(3) of the Land Acquisition Act.

Order accordingly.

Solicitors: *Drew & Napier; Rodyk & Davidson.*